

STATE OF HAWAI‘I

HAWAI‘I LABOR RELATIONS BOARD

In the Matter of

HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO,

Complainant,

and

DAVID IGE, Governor, State of Hawai‘i;
DEPARTMENT OF EDUCATION, State of
Hawai‘i; CHRISTINA M. KISHIMOTO,
Superintendent, Department of Education,
State of Hawai‘i; BOARD OF EDUCATION,
State of Hawai‘i,

Respondents.

CASE NO(S). 20-CE-02-955a
20-CE-03-955b
20-CE-04-955c
20-CE-06-955d
20-CE-09-955e
20-CE-13-955f

ORDER NO. 3677

PRETRIAL ORDER AND NOTICES

- (1) NOTICE TO RESPONDENT(S) OF PROHIBITED PRACTICE COMPLAINT;
- (2) NOTICE TO PARTIES OF EXTRAORDINARY CIRCUMSTANCES
- (3) NOTICE OF FILING REQUIREMENTS;
- (4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS;
- (5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD
- (6) NOTICE OF PREHEARING CONFERENCE
- (7) NOTICE OF PRETRIAL CONFERENCE
- (8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY
- (9) NOTICE OF HEARING ON THE MERITS; AND
- (10) SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES

PRETRIAL ORDER AND NOTICES

THE PARTIES ARE HEREBY NOTIFIED AND ORDERED TO COMPLY WITH THIS PRETRIAL ORDER AND NOTICES. The Hawai'i Labor Relations Board (Board) may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this Pretrial Order and Notice if the parties or attorneys have not shown good cause for failure to comply or a good faith effort to comply.

This document controls the course of proceedings and may not be amended except by the Board through an Order or Notice, by a written request by a party with written consent of all the parties (stipulation), or by an order granting a motion filed with the Board. The use of singular, plural, masculine, feminine, and neuter pronouns include the others as the context may require.

(1) NOTICE TO RESPONDENTS OF A PROHIBITED PRACTICE COMPLAINT

The attached prohibited practice complaint (Complaint) was filed with the Board by the above-named Complainant(s) on: **December 23, 2020**.

PURSUANT TO HAWAI'I REVISED STATUTES (HRS) § 377-9(b) AND HAWAI'I ADMINISTRATIVE RULES (HAR) § 12-42-42: NOTICE IS HEREBY GIVEN TO RESPONDENT(S) that the above-named COMPLAINANT(S) filed a prohibited practice Complaint with the Board, a copy of which is attached, alleging that you have engaged in or are engaging in prohibited practices in violation of HRS Chapter 89.

YOU ARE DIRECTED to file a written answer to the Complaints within ten (10) days after service of the Complaints. One copy of the answer must be served on each party, and the original with certificate of service on all parties must be filed with the Board no later than 4:30 p.m. on the tenth day after service of the Complaint. If you fail to timely file and serve an answer, that failure constitutes an admission of the material facts alleged in the Complaint and a waiver of hearing. (HAR § 12-42-45(g))

(2) NOTICE OF EXTRAORDINARY CIRCUMSTANCES

Due to the current concerns regarding COVID-19, the Governor of the State of Hawai'i (Governor) issued a series of Emergency Proclamation, with the first being signed on March 5, 2020. These proclamations, among other things, gave agencies the ability to conduct certain hearings by telephone or video conference without the physical presence of the parties at the same location, and suspend certain rules, statutory requirements, and administrative hearing procedures as needed to deal with the emergency situation brought on by COVID-19.

On March 29, 2020, the Governor issued Executive Order No. 20-02, which, among other things, gave the Board the sole discretion to waive the requirement in HRS § 377-9 to hold a

hearing on the complaint not more than 40 days after the filing of the complaint or amendment thereof. The Board hereby waives this requirement in this case.

Accordingly, the Board is holding remote, videographic hearings and is mandating electronic filing during the emergency period, unless terminated by separate proclamation, whichever occurs first. (See Order Nos. 3605 and 3647)

(3) NOTICE OF FILING REQUIREMENTS

1) Electronic Filing

All filings in this case must be made electronically through the Board's filing service FileandServeXpress (FSX). There is no charge to the parties for use of this electronic filing service. Should any party not have access to the Internet, or for any other concerns or complications, please contact the Board via electronic mail or (808) 586-8616.

To register, a party is required to complete and submit the Board Agreement to E-File (Form HLRB-25), as amended, which is available at <http://labor.hawaii.gov/hlrb/forms/>.

Questions regarding the Board's electronic filing system should be directed to the Board's staff at (808) 586-8616.

2) Filing Requirements Regarding Protection of Social Security Numbers and Personal Information

Before a party files or submits any pleading, correspondence, or other document (Documents) to the Board, whether electronically or manually, the party must make certain that all social security numbers and personal information are redacted or encrypted. "Personal information" includes social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest. To the extent any personal information is relevant to the Board's consideration of this case, the submitting party must submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended.

If a party submits a document that requires redaction of a page(s), the party must, by motion, request permission from the Board to withdraw and replace the original document, in its entirety, with a redacted copy of such document, pursuant to HAR § 12-42-8(g)(11), "The Board may permit withdrawal of original documents upon submission of properly authenticated copies to replace such document."

The Board may impose appropriate monetary or other sanctions upon parties or attorneys who do not comply with this provision where the parties or attorneys have not shown good cause for failure to comply or a good faith attempt to comply.

(4) NOTICE OF APPEARANCE AND ACCESSIBILITY OR ACCOMMODATIONS

All parties have the right to appear and to be represented by counsel or any other authorized person in all Board proceedings, subject to the Extraordinary Circumstances set forth in Section (2) above. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

The parties should be aware that the Board is in a secured State of Hawai'i building, which may not be accessible to the public during the emergency period referenced in the Notice of Receipt of Notice of Contest.

(5) NOTICE OF STRUCTURE FOR REMOTE HEARINGS BEFORE THE BOARD

The Board currently uses Zoom as its platform for online proceedings. The Board hereby orders all parties to follow the requirements laid out in this Order for all Remote Zoom Hearings before the Board.

Parties and representatives should familiarize themselves with Zoom in preparation for all online Board proceedings. For security purposes, the Board will utilize the "waiting room" function.

Prior to the hearing:

1. The Board will provide Zoom login information to the parties in advance of the hearing.
2. A party who shares the Zoom login information with any other group or individual (Sharing Party) must provide the Board and the other party/parties with a complete list of participants they have invited to attend the proceedings, including any support staff and witnesses. This list must be emailed to the Board at dlir.laborboard@hawaii.gov.
3. Any Sharing Party must inform non-witness participants:
 - 1) that they must keep their microphones muted at all times; and
 - 2) that they must keep their cameras off at all times.
4. Any Sharing Party must inform **all** participants:

- 1) that they must submit their full name as their username when requesting entry to the Zoom conference, to allow the Board to ensure compliance with the witness exclusion rule, unless the party sets up a device specifically for witness use only, in which case that device may log in with the username “witness”; and
- 2) that they may not record, screen shot, record conversations, and/or use third party software to record the proceeding.

(6) NOTICE OF PREHEARING CONFERENCE

PURSUANT TO HRS § 89-5(i)(4) and (i)(5), and HAR § 12-42-47:

NOTICE IS HEREBY GIVEN that the Board will conduct a Prehearing Conference on the date listed below and in the Schedule of Deadlines and Hearing Dates (Schedule) in this document.

DATE AND TIME: January 8, 2021 at 9:00 a.m.

LOCATION: Remote Zoom Hearing

The purpose of the Prehearing Conference is to clarify the issues, if any; to the extent possible, to reach an agreement on facts, matters, or procedures that will facilitate and expedite the hearing or adjudication of the issues presented; to establish deadlines for prehearing briefing; to identify witnesses and file applications for the issuance of subpoenas; and for such other matters as may be raised.

All parties have the right to appear at the Prehearing Conference telephonically and to be represented by counsel or any other authorized person. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai‘i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, including language access, please call the Board at (808) 586-8616, at least seven (7) days prior to a Board proceeding.

(7) NOTICE OF PRETRIAL CONFERENCE

PURSUANT TO HRS §§ 89-5(i)(4) and (i)(5), and 377-9:

NOTICE IS HEREBY GIVEN that the Board will conduct a Pretrial Conference on the date listed below and in the Schedule in this document.

DATE AND TIME: January 26, 2021 at 10:00 a.m.

LOCATION: Remote Zoom Hearing

1) Pretrial Statement

Both the Complainant(s) and the Respondent(s) must file a Pretrial Statement with the Board as listed in the Schedule set forth below. The Pretrial Statement must include the following:

1. Statement of Issues
2. Witness List

The witness lists must include, in the interest of judicial economy, a brief but meaningful summary of the nature of the testimony expected, and the order in which the witnesses are expected to be called upon, subject to the witness' availability.

The summary for each witness must include sufficient information for the Board to determine whether the testimony will be irrelevant, immaterial, or unduly repetitious to any other witness testimony; see HRS § 91-10(1). The summary, therefore, must include sufficient information to show the Board that the testimony of each witness will be different, and so the summary for each witness must be individualized.

Failure to include individualized summaries for any witness may be grounds for the Board to strike that witness and not allow them to testify at the *de novo* hearing.

The witness list must also include information regarding the location where the party expects the witness to testify from. This location may include the witness' home, a party's office, or any other location from which the witness can testify remotely, without assistance or interference from any other party, and can access the relevant exhibits.

If a party intends to file a request for a subpoena for a witness, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the witness list.

3. Exhibit List

The exhibit lists must include copies of the proposed exhibits. The parties are required to use the File & ServeXpress eFiling system to file the exhibits before or by 4:30 p.m. (HST) on the deadline day, as ordered in Board Order No. 3605. The exhibits must be combined and filed in a searchable portable document format (PDF) not exceeding 10 megabytes, with each exhibit bookmarked.

If a party intends to file a request for a subpoena duces tecum for any of its exhibits, that request must be concurrently filed with the Pretrial Statement, and a notation that a request is being made must be listed in the exhibit list.

The Complainant must identify his exhibits using alphabetical letters (A, B, C, D, etc.). Union Respondent(s) must identify its exhibits using numerical designations preceded by U (e.g., U-1, U-2, U-3, etc.).

If there are any duplicative exhibits, the parties must designate them as Joint Exhibits, the parties must designate one party to file these exhibits, and the Exhibits must be marked with numerical designations preceded by J (e.g., J-1, J-2, J-3, etc.).

All Exhibits are to be bates-stamped in the upper right-hand corner.

Additionally, the Exclusive Representative, unless no Exclusive Representative is party to the case, in which case the Employer, must submit to the Board the full applicable collective bargaining agreement(s), including any Memoranda of Understanding, Memoranda of Agreement, or any other supplemental agreement that has any bearing on these proceedings. These documents must be marked as Board Exhibit 1 or Board Exhibit 1a, 1b, 1c, etc. and must be bates-stamped in the upper-right hand corner.

2) Pretrial Conference

At the pretrial conference, the Parties must be prepared to discuss, raise, and present their position regarding the presentation of the anticipated evidence (witnesses, exhibits) to be introduced at the Hearing on the Merits (HOM), including but not limited to any stipulations, evidentiary issues, objections, or confidentiality issues that require protection from public disclosure and the narrow tailoring of methods to protect that information (e.g. sealing or redaction).

While all parties have the right to appear at the Pretrial Conference and to be represented by counsel or any other authorized person, all parties are required to either appear or have a representative appear. Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(8) NOTICE OF WITNESS REQUIREMENTS WHILE TESTIFYING REMOTELY

Due to the situation with COVID-19, unless otherwise ordered by the Board, all witnesses must testify videographically. Accordingly, the Board **orders all parties** to inform their witnesses that, unless otherwise directed or allowed, when the witness testifies:

1. The witness must be in a location without anyone else in the room with them, and there should be no one at the location who can overhear their testimony;
2. The device from which the witness appears must be used during the witness' testimony solely for the purpose of the witness appearing by video;
3. The witness may not consult with anyone during testimony;
4. The party calling the witness must ensure that the witness has access to all exhibits in the case;
5. The witness must not look at or make reference to notes or any other documents or materials other than the exhibits, and may look at the exhibits only when directed to do so by a party or the Board;
6. At all times while testifying, the witness must be clearly visible, face the camera, and speak directly and audibly into the microphone;
7. The witness may not use a virtual background; and
8. The witness must not have any communication with third parties while they are on the stand and under oath.

(9) NOTICE OF THE HEARING ON THE MERITS

NOTICE IS HEREBY GIVEN, pursuant to HRS §§ 377-9, 89-5(i)(3), (4), (5), and 89-14, and HAR §§ 12-42-46 and 12-42-49 that the Board will conduct an HOM on the instant Complaint at the place, time and date listed below and in the Schedule set forth below. The purpose of the HOM is to receive evidence and arguments on whether Respondent(s) committed prohibited practices as alleged by Complainant(s).

DATE AND TIME: February 2, 2021 at 11:00 a.m.

LOCATION: Remote Zoom Hearing

Subject to the Board's discretion due to the Extraordinary Circumstances listed above in Section 2, all parties have the right to appear at the Hearing on the Merits and to be represented by counsel or any other authorized person. **All parties, representatives, and witnesses must appear at the hearing on the merits.** Please note that this requirement may be altered due to the Extraordinary Circumstances listed above in Section 2 by Board Order.

Auxiliary aids and services are available upon request to the parties and representatives with disabilities. For TTY, dial 711, then ask for (808) 586-8616, the Hawai'i Labor Relations Board, within seven (7) days prior to a Board proceeding. For any other accommodation, please call the Board at (808) 586-8616.

(10) **SCHEDULE OF HEARINGS, CONFERENCES, AND DEADLINES**

<u>DATES AND DEADLINES</u>	<u>DATE</u>	<u>TIME</u>
<u>Prehearing Conference</u>	1/8/21	9:00 a.m.
<u>Dispositive Motion Deadline</u>	1/11/21	
<u>Response to Dispositive Motion Deadline</u>	1/19/21	
<u>Pretrial Statement; Exchange of Exhibits; Subpoena Deadline</u>	1/19/21	
<u>Pretrial Conference and Hearing on Dispositive Motions</u>	1/26/21	10:00 a.m.
<u>Hearing on the Merits</u>	2/2/21	11:00 a.m.

All submissions must be filed on or before 4:30 p.m. on the deadline date.

DATED: Honolulu, Hawai'i, _____ December 23, 2020 _____.

HAWAI'I LABOR RELATIONS BOARD



Marcus R. Oshiro

MARCUS R. OSHIRO, Chair

Sesnita A. D. Moepono

SESNITA A.D. MOEPONO, Member

J.N. Musto

J.N. MUSTO, Member

Copies sent to:

Stacy Moniz, HGEA

David Ige, Governor, State of Hawai'i

Department of Education, State of Hawai'i

Christina M. Kishimoto, Superintendent, Department of Education, State of Hawai'i

Board of Education, State of Hawai'i

James Halvorson, Deputy Attorney General



EFiled: Dec 22 2020 04:43PM HAST
Transaction ID 66207238
Case No. 20-CE-02-955a-f

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

FORM HLRB-4
PROHIBITED PRACTICE COMPLAINT

INSTRUCTIONS. Submit the original¹ of this Complaint to the Hawaii Labor Relations Board, 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. If more space is required for any item, attach additional sheets, numbering each item accordingly.

1. The Complainant alleges that the following circumstances exist and requests that the Hawaii Labor Relations Board proceed pursuant to Hawaii Revised Statutes Sections 89-13 and 89-14 and its Administrative Rules, to determine whether there has been any violation of the Hawaii Revised Statutes, Chapter 89.
-

2. COMPLAINANT Please select one that describes the Complainant:

☐ Public Employee ☐ Public Employer ☒ Public Union (public employee organization)

- a. Name, address and telephone number.

Hawaii Government Employees Association, AFSCME,
Local 152, AFL-CIO
888 Mililani Street, Suite 401
Honolulu, Hawaii 96813

-
- b. Name, address, e-mail address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

Stacy Moniz
Advocacy Chief
888 Mililani Street, Suite 401
Honolulu, Hawaii 96813
email: smoniz@hgea.org
Telephoen: 808.543.0055

¹ Notwithstanding Board rule 12-42-42(b), the Board only requires the original of the complaint.

3. **RESPONDENT** Please select one that describes the Respondent:

☐ Public Employee ☒ Public Employer ☐ Public Union (public employee organization)

a. Name, address and telephone number.

The Honorable David Y. Ige
415 S. Beretania Street, #5
Honolulu, Hawaii 96813

Department of Education
1390 Miller Street
Honolulu, Hawaii 96813
See Attachment 1

b. Name, address and telephone number of the principal representative, if any, to whom correspondence is to be directed.

James E. Halvorson, Esq.
Deputy Attorney General, State of Hawaii
235 South Beretania Street, 15th Floor
Honolulu, Hawaii 96813
Telephone: 808.587.2900

4. Indicate the appropriate bargaining unit(s) of employee(s) involved.
Bargainig Units 02, 03, 04, 06, 09, and 13

5. **ALLEGATIONS**

The Complainant alleges that the above-named respondent(s) has (have) engaged in or is (are) engaging in a prohibited practice or practices within the meaning of the Hawaii Revised Statutes, Section 89-13. (Specify in detail the particular alleged violation, including the subsection or subsections of the Hawaii Revised Statutes, Section 89-13, alleged to have been violated, together with a complete statement of the facts supporting the complaint, including specific facts as to names, dates, times, and places involved in the acts alleged to be improper.)
See Attachment 2.

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6. Provide a clear and concise statement of any other relevant facts.
See Attachment 2.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

DECLARATION IN LIEU OF AFFIDAVIT

(If the Complainant is self-represented, then the Complainant must sign this Declaration).

Please select one:

- ☐ the Complainant
☒ the Complainant's principle representative
☐ the person described below

I, Stacy Moniz,
do declare under penalty of law that the foregoing is true and correct.

Date: 12/22/20

/s/ Stacy Moniz

The person signing above agrees that by signing his or her name in the above space with a "/s/ first, middle, last names" is deemed to be treated like an original signature.

smoniz@hgea.org

Signor's email address

If you are not the Complainant or listed as the principle representative in #2(b) and you are signing above, then please complete the contact information below.

Your address:

Your phone number: _____

Your relationship to the Complainant:

If the Complainant or principal representative is registered with File and ServeXpress (FSX), then you may proceed to electronically file this complaint.

If the Complainant or the principal representative is not registered with FSX and would like to electronically file this complaint through FSX, then complete the Board Agreement to E-File, FORM HLRB-25. (Form HLRB-25 is on the HLRB Website at labor.hawaii.gov/hlrb/forms.) Email the completed form to the Board at dlir.laborboard@hawaii.gov.

ATTACHMENT 1-ADDITIONAL RESPONDENTS

Christina M. Kishimoto
Superintendent, Department of Education
1390 Miller Street
Honolulu, Hawaii 96813

The Board of Education
State of Hawaii
1390 Miller Street, 4th Floor
Honolulu, Hawaii 96813

ATTACHMENT 2

1. At all times relevant herein, Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO (“HGEA”) was an employee organization as defined under Hawaii Revised Statutes (“HRS”) §89-2.

2. At all times relevant herein, HGEA was and is the certified exclusive representative and collective bargaining agent for bargaining unit members in Units 2, 3, 4, 6, 9, 13 as those bargaining units are defined under HRS §89-2 and §89-6(a)(2), (3), (4), (6), (9), (13) and has been so recognized and certified by the Hawaii Labor Relations Board (and its predecessor) pursuant to HRS §89-2.

3. At all times relevant herein, Respondent The Honorable David Y. Ige (“Respondent Ige”) was and is the duly elected Governor of the State of Hawaii, and an employer or public employer as defined under HRS 89-2 and under the applicable collective bargaining agreements (“CBA” or CBA’s”) covering the relevant time periods herein.

4. Respondent Ige is vested with the executive power of the State of Hawaii and is responsible under the State Constitution “for the faithful execution of the laws” pursuant to Sections 1 and 5, Article V, of the Constitution of the State of Hawaii.

5. Respondent Department of Education, State of Hawaii (“Respondent DOE”) is a principal executive department of the State of Hawaii, charged with oversight of the statewide system of public schools, and is a public employer as defined under HRS 89-2 and the applicable CBA’s.

6. Respondent Board of Education (“Respondent BOE”) is the executive head of Respondent DOE and is vested with the “power, as provided by law, to formulate statewide educational policy” pursuant to Section 3, Article IX of the Constitution of the State of Hawaii.

7. At all times relevant herein, Respondent Christina M. Kishimoto (“Respondent Kishimoto”) was and is the Superintendent of the DOE, State of Hawaii, and an employer or public employer as defined under HRS §89-2 and the applicable CBA.

8. Respondent Kishimoto is responsible for administering “programs of education and public instruction throughout the State, including education at the primary and secondary school levels, adult education, school library services, health education and instruction (not including dental health treatment transferred to the department of health), special education and Title I funded programs at the prekindergarten level, and such other programs as may be established by

law” pursuant to “policies established by” Respondent BOE. HRS §26-12.

9. The Respondents are collectively referred to as the “Employer.”

10. At all times relevant herein, HGEA and the Employer were and are parties to a valid, and legally enforceable CBA effective from July 1, 2017 through June 30, 2021 for Unit 06, and from July 1, 2019 through June 30, 2021 for all other affected bargaining units.

11. The HGEA and the Employer are currently negotiating successor contracts to the CBA’s that expire on June 30, 2021, wherein the parties are taking into consideration the effects of the COVID-19 outbreak on the State of Hawaii.

12. At all times relevant herein, the Employer also initiated discussions relating to reopening the current CBA to renegotiate provisions therein related to wages, hours, furloughs, working conditions and leave.

13. HRS §89-9(a) and (d) provide in pertinent part that neither the Employer nor the Union can “compel either party to agree to a proposal or make a concession” and the exercise of the employer’s rights delineated under HRS §89-9(d) “shall not be used to invalidate provisions of collective bargaining agreements in effect on and after June 30, 2007, and except as otherwise provided in this chapter, shall not preclude negotiations over the implementation of management decisions that affect terms and conditions of employment that are subject to collective bargaining.”

14. As part of the HGEA’s good faith duty in the negotiating process and its duty and responsibility to exercise due diligence on behalf of its members to determine whether reopening the existing CBA’s was appropriate and in the best interest of its members, HGEA asked questions, raised objections and requested information from the Employer that was necessary to HGEA’s review and evaluation of the Employer’s proposal to negotiate furloughs.

15. Amid the exchange of information relating to furloughs, the Employer blindsided HGEA by announcing that furloughs would be unilaterally imposed and implemented on the HGEA bargaining unit members. No meaningful negotiations have occurred between HGEA and the Employer.

16. On December 9, 2020, Respondent Ige acknowledged during a public press conference that negotiations were occurring and would continue, but nonetheless stated and ordered that furloughs would be imposed and that Respondent DOE was directed to implement its furlough plan effective January 1, 2021.

17. During his press conference, Respondent Ige threatened that if his furlough plan were not accepted by the public unions, he would be forced to lay off approximately 4,000 state workers.

18. Shortly thereafter, Respondent Kishimoto disclosed and communicated the DOE's furlough implementation plan directly with HGEA's members, to the exclusion of HGEA, and announced that the plan would go into effect on January 1, 2021.

19. Neither Respondent Ige nor Respondent Kishimoto communicated or discussed the Employer's final furlough implementation plan in advance with HGEA. Instead, HGEA learned of the DOE's final furlough implementation plan for the first time from its members.

20. On December 17, 2020, Respondent BOE held a meeting wherein several board members voiced concerns over the unilateral implementation of the furlough plan, urged Respondent Ige to rescind his decision and continue negotiations with the Unions, and made clear that they did not agree to or sanction the furlough plan.

21. The Employer's conduct herein constitutes prohibited practices under HRS §89-13(a).

22. The Hawaii Constitution, Article XIII, Section 2, grants HGEA the constitutional right to collective bargaining.

23. Article XIII, Section 2 of the Hawaii Constitution protects the ability of public unions "to engage in negotiations concerning core subjects such as wages, hours, and other conditions of employment." *United Pub. Workers, AFSCME, Local 646, AFL-CIO v. Yogi*, 101 Hawai'i 46, 53, 62 P.3d 189, 196 (2002). Unilateral implementation of a revised work schedule is a prohibited practice due to Employer's failure to negotiate. See, *In the Matter of Hawaii Government Employees Association, Local 152, HGEA/AFSCME, AFL-CIO and George R. Ariyoshi, Governor, et al.*, Decision 63, I HPERB 570 (1975).

24. HRS §89-13(a) provides in relevant part that it is a prohibited practice for a public employer to willfully:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;

- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;

...

- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;

25. The Legislature has further declared under HRS §89-1(b) “that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.”

26. Pursuant to HRS §89-3, “Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion.”

27. HRS §89-9(a) provides:

The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the February 1 impasse date under section 89-11, and **shall negotiate in good faith with respect to wages, hours,** the amounts of contributions by the State and respective counties to the Hawaii employer-union health benefits trust fund to the extent allowed in subsection (e), **and other terms and conditions of employment** which are subject to collective bargaining and which are to be **embodied in a written agreement** as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession. (emphasis added).

28. The Hawaii Supreme Court has stated:

Law on collective bargaining in public employment, without ambiguity, clearly requires both the public employer and the exclusive representative of

the public employees to bargain (negotiate) collectively in good faith. The need for good faith bargaining or negotiation is fundamental in bringing to fruition the legislatively declared policy ‘to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government.’

Bd. of Ed. v. Hawaii Pub. Employment Relations Bd., 56 Haw. 85, 87, 528 P.2d 809, 811 (1974)(emphasis added).

29. Pursuant to HRS §89-14, the HLRB has “exclusive original jurisdiction over any controversy concerning prohibited practices.”

30. The HLRB has broad authority and the jurisdiction to adjudicate prohibited practice complaints in their entirety. See, HRS §89-5(i)(4); *In re Hawai‘i Gov’t Emps. Ass’n, Local 152*, 116 Haw. 73, 97, 170 P.3d 324, 348 (2007).

31. The HLRB’s jurisdiction as it relates to prohibited practice complaints under HRS §89-13(a) includes jurisdiction to determine whether conduct that also violates the provisions of an existing CBA constitutes a prohibited practice. See, *In re United Pub. Workers, AFSCME, Local 646, AFL-CIO, Union*, 131 Hawai‘i 142, 152, 315 P.3d 768, 778 (Ct. App. 2013), as corrected (Feb. 21, 2014); *Fasi v. State Pub. Employment Relations Bd.*, 60 Haw. 436, 443-45, 591 P.2d 113, 117-118 (1979).

32. At all times relevant herein, the HGEA and the Respondents were and are parties to CBA’s which contain various contracted terms, provisions and contractual agreements.

33. The current CBA for Unit 06 went into effect on July 1, 2017 and expires on June 30, 2021. The CBAs for Bargaining Units (BU) 02, 03, 04, 09 and 13 went into effect on July 1, 2019 and expire on June 30, 2021.

34. Articles within those CBA’s require mutual consent for changes in wages, hours or other conditions of work, as well as Salaries and Leave.

35. On March 4, 2020, Respondent Ige issued an emergency proclamation for the State of Hawaii wherein he proclaimed that the COVID-19 was a health emergency and as such, he enacted his emergency powers pursuant to HRS §127A to provide for the health, safety, and welfare of the people of the State of Hawaii. Respondent Ige supplemented his emergency proclamation at least 17 times which is of questionable legal authority.

36. On or about April 8, 2020, Respondent Ige and other members of the Governor’s administration informed several public unions, including HGEA, that they were considering

furloughs to address an anticipated drop in State revenues. The Employer did not present a proposed furlough implementation plan at that time.

37. On or about April 14, 2020, representatives of several public unions, including HGEA, met with members of Respondent Ige's administration who informed the unions that the Employer was considering implementing a 20% pay cut to the existing CBA as early as May 1, 2021, and that the Employer would follow up with the unions to further discuss and negotiate a proposed plan. The Employer did not present a proposed furlough implementation plan at that time.

38. On or about September 21, 2020, the Employer briefed various public unions, including HGEA, on COVID-19's impact on the State's General Fund Financial Plan, which included but was not limited to the following:

- The State was expecting a \$2.1 billion revenue shortfall for fiscal year 2020 and 2021.
- 4 years of furloughs for fiscal year 2021 through 2024 were necessary to repay the State's \$750 million loan.
- Future federal assistance is uncertain and is dependent on outcome of upcoming elections.

39. On September 25, 2020, Ryker Wada, Chief Negotiator and representative of the Employer's negotiating team, sent letters to HGEA requesting to "bargain in good faith" furlough savings for BUs 2, 3, 4, 9, 13, 14, BU 6, and BU 8.

40. The Employer provided HGEA with proposed Memorandum of Agreements for BUs 2, 3, 4, 9, 13 and 14, BU 6, and BU 8, effective December 1, 2020 through June 30, 2024.

41. The Employer's Memorandum of Agreement ("MOA") proposals, which appeared to extend the existing CBA's for four (4) years, had not been raised by the Employer during negotiations and called into question the propriety of such a proposal that would expire on an even year (2024) and avert the ratification requirements under HRS §89-10.

42. The Employer's MOA for BUs, 2, 3, 4, 9, 13 and 14 proposed that HGEA agree to a salary reduction wherein employees in these units would be placed on Supplemental Time Off Without Pay ("STOWOP") from "zero (0) up to eighty-six (86) days, with a corresponding pay adjustment for each day of STOWOP, as determined by: - The governor in the case of all HGEA State of Hawaii executive branch Employees, except Employees of the department of education,

the University of Hawaii, and the Hawaii Health Systems Corporation, - The respective mayors in the case of BUs 02, 03, 04, 13 and 14 Employees of the counties, - The Chief Justice of the Supreme Court in the case of BUs 02, 03, 04, 09 and 13 Employees of the Judiciary, - The Board of Education in the case of BUs 02, 03, 04, 09 and 13 Employees of the Department of Education, - The Board of Regents in the case of BUs 02, 03, 04 and 09 Employees of the University of Hawaii, and – The Hawaii Health Systems Corporation Board in the case of BUs 02, 03, 04, 09 and 13 Employees of the Hawaii Health Systems Corporation.”

43. The Employer’s proposed MOA for BUs 2, 3, 4, 9, 13 and 14 states that the “above-listed individuals or entities will develop their implementation plans for STOWOP” but that the “attached STOWOP Implementation Plan shall be implemented for all entities for the period December 1, 2020 through June 30, 2024.”

44. The Employer’s STOWOP Implementation Plan, State of Hawaii Executive Branch, for BUs 2, 3, 4, 9, 13 and 14 (Excluding the Department of Education, University of Hawaii and Hawaii Health Systems Corporation) provides that to address the revenue shortfall for Fiscal Biennium 2019- 2021, “the Employer has implemented a 9.23% pay reduction plan, effective December 1, 2020 through June 30, 2024, which places Bargaining Units 2, 3, 4, 9, 13 and 14 employees” on STOWOP “at the rate of sixteen (16) hours for each month of service, except for the months of May 2024 and June 2024 where Employees will receive a total advance of thirty-two (32) hours on January 1, 2024, provided that the Employee is employed on January 1, 2024...”

45. The Employer’s STOWOP Implementation Plan defines STOWOP as “a non-pay leave due to lack of funds, and such leave corresponds to a temporary 9.23% labor cost reduction by means of a mandatory salary waiver. The reduction is spread evenly over the pay periods in each contract year no matter when the STOWOP is taken.”

46. The Employer’s MOA for BU 06 proposed that HGEA agree to a salary reduction wherein employees in BU 06 would be placed on Directed Leave Without Pay (“DLWOP”) from “zero (0) up to eighty-six (86) days with a corresponding pay adjustment for each day of DLWOP, as determined by the following: - The superintendent of the Department of Education [Respondent Kishimoto]; and – The Board of Education. The above-listed individual or entities will develop the schedules for DLWOP” which “shall be implemented for all entities for the period December 1, 2020 through June 30, 2024.” Although the MOA referenced an attached

“DLWOP Implementation Plan”, none was attached or provided to HGEA.

47. On November 28, 2020, HGEA responded to the Employer’s proposal to negotiate furloughs for BUs 2, 3, 4, 9, 13 and 14, and BUs 6 and 8. HGEA informed the Employer that it objects to any proposed MOA that extends beyond the term of the applicable CBAs, i.e., June 30, 2021. HGEA noted that the duration of the proposed MOAs were contrary to the Employer’s longstanding position, and the parties’ past practice and understanding.

48. On October 28, 2020, the Employer provided HGEA with the State’s PowerPoint Presentation entitled “COVID-19 Impact on the State’s General Fund Financial Plan (Updated), and stated, that they looked forward to meeting with HGEA and its negotiating teams on October 29, 2020.

49. On October 29, 2020, Neal Miyahira, State Budget Administrator, Department of Budget and Finance briefed HGEA staff and negotiating team representatives from Units 2, 3, 4, 6, 8, 9, 13 and 14 on COVID-19’s impact on the State’s General Fund Financial Plan. Representatives from the Employer groups were also present to observe Mr. Miyahira’s presentation of the State’s financial plan.

50. The PowerPoint Presentation reiterated the State’s expectation of a \$2.1B revenue shortfall from fiscal years 2020 and 2021, that “Future Federal assistance is uncertain and is dependent on outcome of upcoming elections” and that the “Furloughs extend for 4-years in order to pay back \$750M working capital borrowing.”

51. Upon information and belief, Employer believed that future federal assistance was more likely if Former Vice-President Joseph Biden was elected President of the United States. Since the Employer’s presentation, Former Vice-President Biden has become President-Elect Biden and will be sworn in as the 46th President of the United States on January 20, 2021.

52. On November 6, 2020, the Employer sent a letter to HGEA requesting to schedule another meeting. The Employer expressed a willingness to meet again to respond to questions regarding the State’s updated PowerPoint presentation and to discuss the Employer’s proposal.

53. On or about November 9, 2020 and unbeknownst to the HGEA, Respondent Kishimoto had already formulated and finalized the DOE’s “phase one” furlough implementation plan that called for furloughed days starting January 2021 through June 2021, which is when the existing CBA would expire. The plan called for six (6) furlough days for 10-month employees and 10 furlough days for 12-month employees.

54. On November 12, 2020, HGEA informed the Employer that it received the Employer's letter dated November 6, 2020 but was tied up through the weekend preparing for HGEA's biennial convention and would get back to the Employer the following week. In response to the State's financial presentation, on November 23, 2020, HGEA transmitted a list of questions from the respective HGEA bargaining unit teams to the Employer for response.

55. On December 4, 2020, HGEA sent a letter to the Employer reminding them that on November 23, 2020, HGEA sent a list of questions from the respective bargaining unit 53ams relating to the State's financial presentation, and that to date, have not received any response to the teams' questions. HGEA noted that "the information requested is necessary for HGEA's review of the Employer's proposal to negotiate furloughs," and looked "forward to the Employer's response and continued discussions on this matter."

56. On December 4, 2020, the Employer sent a response to HGEA's questions that was vague in many respects and left many of the same questions unanswered and/or raised even more questions.

57. As HGEA continued to carefully consider the Employer's minimal responses and information or lack thereof provided pursuant to good faith negotiations, Respondent Ige held a press conference on December 9, 2020 at which time he publicly announced his intention to unilaterally impose and implement his furlough plan effective January 1, 2021 for most State Employees.

58. Respondent Ige announced during his December 9, 2020 press conference that the affected public unions must agree to his furlough plan or 4,000 public employees would be laid off. Respondent Ige also stated during his press conference that negotiations with the unions were ongoing and would continue, but that his furlough plan would nevertheless be implemented as of January 1, 2021.

59. On December 9, 2020, Respondent Ige also sent an email to State employees informing them that he directed State agencies to prepare to furlough most state employees for two days each month starting January 1, 2021. Respondent Ige stated that "[d]etails as to how the furloughs are to be implemented will be provided soon" and that "we continue to attempt to negotiate the implementation of furloughs." He further stated "[p]lease know that this difficult step enables the majority of you to keep your jobs..."

60. Later that day and in obvious response to Respondent Ige's furlough announcement

and his claim that Respondent DOE would announce its implementation plan, Respondent Kishimoto mass emailed HGEA's members that Respondent Ige announced the state budget and plans to implement furloughs for most state employees, including HIDEOE, beginning January 2021. Respondent Kishimoto noted that the "Office of Collective Bargaining is the lead on these active negotiations; therefore, we do not have details of the specific impact to HIDEOE employees at this time". Respondent Kishimoto stated "we are anxious to get these details to you as soon as possible" and "will share updates as details become available."

61. On December 10, 2020, in response to the Employer's December 4, 2020 reply, and statements by Respondent Ige on December 9, 2020 regarding furlough, HGEA sent a list of additional questions to the Employer for response. HGEA noted that the information requested is crucial to HGEA's review of the Employer's proposal to negotiate furloughs.

62. HGEA has not yet received a response to its December 10, 2020 request for information.

63. On December 14, 2020, Respondent Kishimoto circumvented HGEA and communicated directly with HGEA's bargaining unit members notifying them that the Employer's furlough implementation plan "will begin on January 4, 2021", and would include the following furloughed days:

10-Month Employees Six (6) Furlough Days:	12-Month Employees Ten (10) Furlough Days:
<ul style="list-style-type: none"> ● January 4, 2021 ● February 12, 2021 ● March 1, 2021* ● March 22, 2021* ● April 23, 2021* ● June 1, 2021* 	<ul style="list-style-type: none"> ● January 4, 2021 ● February 12, 2021 ● March 1, 2021* ● March 15, 2021* ● March 22, 2021* ● April 23, 2021* ● June 1, 2021* ● June 18, 2021* ● June 25, 2021* ● June 28, 2021*

In addition, "Employees shall not be permitted to substitute vacation, sick, or any paid leaves for the furlough days. Any leave without pay taken during the 2020-2021 school year will result in a pay adjustment in summer pay for 10-month employees."

64. In her December 14, 2020 memo to all DOE Employees, Respondent Kishimoto

falsely stated that “The Department’s furlough implementation plans were shared with the . . . Hawaii Government Employees Association. . . in a good faith effort to mitigate the impact on all employees.”

65. The DOE never shared or informed HGEA of its furlough plan and never made any attempt to negotiate its furlough plan with HGEA prior to announcing it to affected HGEA bargaining unit members.

66. On or about December 16, 2020, the Respondent DOE requested to meet and discuss the Hawaii Department of Education Furlough Plan with HGEA, which it already announced to affected HGEA bargaining unit members it was implementing.

67. On December 17, 2020, Respondent BOE held a meeting wherein several board members voiced their concern over the furlough plan and the lack of communication about the plan with the BOE. Several members of Respondent BOE urged Respondent Ige to withdraw his decision to unilaterally implement furloughs, including, but not limited to, Chairperson Catherine Payne, Vice Chairperson Kenneth Uemura, Board Members Bruce Voss, Shanty Asher, Christina “Kili” Namau’u and Dwight Takeno.

68. The Employer has interfered, restrained, and coerced HGEA’s bargaining unit members in the exercise of their collective bargaining rights guaranteed under HRS §89, including but not limited to the wages, hours, and working conditions that were negotiated and agreed to.

69. The Employer has dominated and interfered with the administration of the HGEA and the exercise of its collective bargaining rights.

70. The Employer has discriminated regarding the terms and conditions of employment to discourage membership in the HGEA.

71. The Employer has refused to bargain collectively in good faith with the HGEA as the exclusive representative regarding its proposal to reopen the existing CBAs and its proposed furlough plan as required under HRS §89-9.

72. The Employer has refused and/or failed to comply with HRS Chapter 89, the relevant CBAs, and HRS §396.

73. The Employer is in violation of the terms of the applicable CBAs.

74. The Employer’s refusal to bargain in good faith, its unilateral implementation of its furlough plan during ongoing negotiations, its direct communication with HGEA’s bargaining

unit members on the subject of negotiations and its threat of layoffs if furloughs are not agreed to, and its violation of the CBA, are evidence of Respondents' willful, egregious, and blatant misconduct and actions which constitute a violation of HRS §89-13(a)(1)-(5), (7) and (8), including but not limited to interfering, restraining and coercing HGEA's members from exercising their guaranteed rights under HRS §89 and the CBA, dominating and interfering with HGEA's formation, existence and administration of its employee organization, discriminating to discourage membership in HGEA's organization, discriminating against HGEA's members because they have joined and chosen to be represented by HGEA, refusing to bargain collectively in good faith with the HGEA, refusing to comply with the mandates of HRS 89, violating the CBA, and putting HGEA's bargaining unit members' well-being in jeopardy.

75. The Employer's unlawful and inappropriate conduct has a chilling effect on HGEA's bargaining unit members in the exercise of their union rights by creating fear and worry amongst HGEA's members.

76. The Employer willfully and intentionally refused to negotiate with the HGEA and/or negotiated in bad faith regarding changes in its bargaining unit members' wages, hours, and working conditions.

77. The Employer willfully and intentionally interfered with and restrained the employment and CBA rights of the HGEA bargaining unit members because of their membership and activities with the HGEA.

78. The Employer's conduct, actions and inactions constituted prohibited practices pursuant to HRS §89-13, and further willfully and intentionally violated HRS Sections 89-3, 89-8, 89-9, the terms of the applicable CBAs and the rights of HGEA's bargaining unit members.

WHEREFORE, Complainant HGEA respectfully requests that this Honorable Board grant appropriate relief and award damages in favor of Complainant and against the above-named Respondents, including, but not limited to, the following:

- a. That a declaratory order issue from the Board finding that:
 - i. The Respondents failed to negotiate in good faith and acted in bad faith;
 - ii. The Respondents violated HRS § 89-9(a) by attempting to compel HGEA to agree to its furlough plan;
 - iii. The Respondents violated HRS § 89-9(d) by attempting to exercise its

management rights to invalidate provisions of an existing collective bargaining agreement that was and is still in effect;

- iv. The Respondents committed a prohibited practice by communicating with HGEA's bargaining unit members on the subject of ongoing negotiations and by attempting to compel an agreement under the threat of layoffs.
- b. That a declaratory order issue from the Board finding that Respondents' conduct was a prohibited practice pursuant to HRS §89-13(a)(1)-(5), (7) and (8);
- c. That an order issue from the Board finding that Respondents have committed a prohibited practice pursuant to HRS §89-13(a)(1)-(5), (7) and (8);
- d. That an injunctive order issue from the Board prohibiting and enjoining Respondents from unilaterally implementing its furlough plan;
- e. That an order issue from the Board directing Respondents to post for publication, in all locations where HGEA bargaining unit members may review and gather, for 60 days, the decision of the Board finding that Respondents' committed prohibited practices pursuant to HRS §89-13(a)(1)-(5), (7) and (8), with proof of compliance being made to the Board and the HGEA;
- f. A cease and desist order prohibiting violations of HRS §89-13(a)(1)-(5), (7) and (8);
- g. Interlocutory relief prohibiting continuing violations by the Respondents of the contractual and collective bargaining rights of the affected public employees of HGEA;
- h. Make whole relief including, but not limited to, back pay, interest, costs and all reasonable fees incurred by the HGEA in bringing and prosecuting this complaint before the Board;
- i. That an order issue from the Board ordering Respondents to pay civil penalties of \$10,000.00 per violation for willfully committing prohibited practices under HRS §89-13(a)(1)-(5), (7) and (8); and
- j. That an order issue from the Board against Respondents, and each of them, for such other and further relief as the Board deems appropriate and proper.

DATED: Honolulu, Hawaii, December 22, 2020.

/s/ Stacy Moniz
STACY MONIZ

Representative for
HAWAII GOVERNMENT EMPLOYEES
ASSOCIATION, AFSCME, LOCAL 152,
AFL-CIO